In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1136

MICHAEL J. WEATHERFORD,
DANIEL LEON WEATHERFORD
AND RAYMOND EUGENE HARVEY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners raise two issues: the lawfulness of the search of their truck for contraband firearms and the validity under the Due Process Clause of the prohibition in the Gun Control Act against interstate transportation of firearms by convicted felons.

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioners were convicted of transporting firearms in interstate commerce after conviction of a felony, in violation of 18 U.S.C. 922(g)(1)(C.T. 2, 21).[1] The court of appeals affirmed (Pet. App. A1-A10).

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[1] "C.T." refers to the clerk's transcript (containing the indictment, pleadings and orders). "Tr." refers to the reporter's transcript of the trial and pre-trial proceedings. Copies of the transcripts are on file in the Clerk's office.

In challenging the search of their vehicle, which led to the seizure of various firearms, petitioners claim only that the officers lacked probable cause to stop their panel truck (Pet. 5-7). This claim is fully considered and properly answered in the opinion of the court below, on which we rely (Pet. App. A3).

Petitioners' contention that 18 U.S.C. 922(g)(1) denies due process (Pet. 7-8) is based on their claim that the class of persons the statute prohibits from transporting firearms--those who have been convicted of a crime punishable by imprisonment for a term exceeding a year--is arbitrary and unreasonable. The argument is that as a consequence of the disparities among the criminal laws of the several jurisdictions of the country (state and federal) conviction for a particular crime--*e.g.*, the theft of $150--might or might not make one subject to the Section's strictures, depending on the penalty assigned for the offense by the particular jurisdiction. While we rely on the court of appeals' answer to this contention (Pet. App. A6-A8),[2] we further point out that there is no

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[2] See, in addition to the decisions cited at Pet. App. A8, *Cases* v. *United States*, 131 F. 2d 916, 924 (C.A. 1), certiorari denied *sub nom. Velazquez* v. *United States*, 319 U.S. 770.

Skinner v. *Oklahoma*, 316 U.S. 535, relied on by petitioners, is not in point. In invalidating Oklahoma's Habitual Criminal Sterilization Act as violative of the Equal Protection Clause, the Court there noted among other things that under the Act one thrice convicted of stealing property valued at more than $20 was liable to sterilization, whereas an embezzler was immune from the Act's penalties no matter how large his defalcations or how numerous his convictions (316 U.S. at 538-539). Nothing comparable is involved here. As the court of appeals pointed out, the classification of persons to whom Section 922(g)(1) applies is as "reasonable and practical" as the nature of such legislation permits (Pet. App. A8). In addition, the legislation with which *Skinner* was concerned dealt with "one of the basic civil rights of man" (316 U.S. at 541)--

suggestion in the petition that the convictions that caused petitioners to be subject to the Section were of the sort to which their contention would apply.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

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the right to procreate. "Manifestly," on the other hand, as the court below noted, "there is no basic civil right to transport weapons * * *" (Pet. App. A8).

[3] The convictions were Indiana convictions for second degree burglary (defined by Indiana law as breaking and entering a structure other than a dwelling house—or any of certain specified types of crafts and vehicles—with intent to commit a felony therein), the prescribed penalty for which is not less than two nor more than five years' imprisonment (Burns Ann. Ind. Stat. (1956), §10-701(b)). Petitioner Harvey had in addition been convicted of the separately defined Indiana offense known as entering to commit a felony, the punishment for which is not less than one nor more than ten years' imprisonment (*id.*, §10-704) (C.T. 2; Tr. 133-145).